

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

---

Great American Insurance Company,

Civil File No. 08-CV-520 (RHK/RLE)

Plaintiff,

v.

**ORDER**

Letourneau & Sons, Inc.; Letourneau  
Refrigeration and Heating, Inc.; Northern  
Trucking & Aggregate, Inc.; John E.  
Letourneau; and John E. Letourneau, Jr.;

Defendants.

---

This matter came before the Court on Plaintiff Great American Insurance Company's ("GAIC") Motion for Summary Judgment. Based on the submissions and the record as a whole, the Court finds as follows:

1. GAIC has established that it sustained the losses set forth in the Affidavit of Thomas Pettygrove and that its Indemnity Agreement with Letourneau & Sons, Inc., Letourneau Refrigeration and Heating, Inc., and Northern Trucking & Aggregate, Inc. (the "Corporate Defendants"), permits it to recover the amount it seeks, jointly and severally, against the Corporate Defendants. The Corporate Defendants have not submitted any response to GAIC's Motion for Summary Judgment on GAIC's claims and have represented that they will not do so. Accordingly, GAIC is entitled to summary judgment as a matter of law.

2. Letourneau & Sons, Inc. and Northern Trucking & Aggregate, Inc. ("Counterclaiming Defendants"), have not submitted any response to GAIC's Motion for

Summary Judgment on their “Conspiracy” counterclaim and have represented that they will not do so. Minnesota law does not recognize a civil action for conspiracy unless the conspiracy is supported by an underlying tort. See Harding v. Ohio Cas. Ins. Co., 41 N.W.2d 818, 824-25 (Minn. 1950); D.A.B. v. Brown, 570 N.W.2d 168, 172 (Minn. Ct. App. 1997). Counterclaiming Defendants have alleged no such tort. Therefore, Counterclaiming Defendants’ counterclaim must be dismissed.

Based on the foregoing, and all the files, records, and proceedings herein, it is **ORDERED** that Plaintiff’s Motion for Summary Judgment (Doc. No. 35) is **GRANTED**. Judgment shall be entered in favor of GAIC and against Corporate Defendants Letourneau & Sons, Inc., Letourneau Refrigeration and Heating, Inc., and Northern Trucking & Aggregate, Inc. in the amount of \$1,757,272.77. The counterclaim of Letourneau & Sons, Inc. and Northern Trucking & Aggregate, Inc. is **DISMISSED WITH PREJUDICE**.

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

Dated: March 2, 2009

s/Richard H. Kyle  
Richard H. Kyle  
United States District Judge